



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

September 20, 1960

Honorable Charles J. Lieck, Jr.  
Criminal District Attorney  
Bexar County Courthouse  
San Antonio, Texas

Opinion No. WW-942

Re: Validity of an order of  
the Commissioners' Court  
providing that voting  
abstentions shall be re-  
corded in the Minutes of  
the Commissioners' Court  
as negative votes.

Dear Mr. Lieck:

You have requested an opinion on the validity of an  
order of the Commissioners' Court of Bexar County dated August  
1, 1960, reading as follows:

"ORDER ADOPTING A RULE OF PROCEDURE  
OF COMMISSIONERS' COURT ON VOTING.

"A motion was presented by County Com-  
missioner Sam Jorrie, duly seconded by County  
Commissioner A. J. Ploch, which motion was voted  
as follows: Commissioners Pena, Jorrie and Ploch  
voting 'Aye': Commissioner Wurzbach and Judge  
Anderson voting 'Nay': It is ordered by the  
Court that the following be adopted as a rule of  
procedure of Commissioners' Court: 'In any case  
where any member of Commissioners' Court (County  
Judge or County Commissioner) abstains from vot-  
ing or fails to vote when present, the minutes  
of Commissioners' Court shall hereafter be marked  
to indicate that the member of Commissioners'  
Court who abstained or failed to vote when pre-  
sent, voted 'No.'"

The Commissioners' Court is a court of record and  
speaks through its minutes. Maples v. Henderson County, 259  
S.W.2d 264 (Civ.App. 1953), err. ref. n.r.e.

Article 2349, Revised Civil Statutes of Texas, 1925,  
requires the County Clerk to keep a record of the proceedings  
of the Commissioners' Court in a suitable book kept for that  
purpose. Brown, et al v. Reese, 67 Tex. 318, 3 S.W.292 (1887).  
In Brown v. Reese, *supra*, the court held that the best evi-  
dence of a proceeding of the Commissioners' Court is "either  
the record itself or a certified copy as provided for by

statute under the hand and seal of the Clerk."


Thus, it is our opinion that it is the mandatory duty of the County Clerk under the provisions of Article 2349 to keep an accurate record of the proceedings of the Commissioners' Court. The order quoted above would require the Clerk to record a "No" vote in those instances where a member of the Commissioners' Court abstains from voting, rather than casting a "No" vote. If the Clerk abided by the order under consideration, the minutes of a Commissioners' Court would reflect such erroneous matter. You are, therefore, advised that insofar as the order of the Commissioners' Court referred to in your request requires the Clerk of the Commissioners' Court to record erroneous matter in the Minutes of the Commissioners' Court, such order is invalid.

S U M M A R Y

It is the duty of the County Clerk to keep an accurate record of the proceedings of the Commissioners' Court in a suitable book kept for that purpose and any order of the Commissioners' Court which would require the County Clerk to record a voting abstention as a "No" vote is invalid to the extent that it requires the County Clerk to violate such mandatory duty.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:ms:zt

APPROVED:  
OPINION COMMITTEE  
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C. Dean Davis  
Wm. R. Hemphill  
Iola Wilcox

REVIEWED FOR THE ATTORNEY GENERAL  
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